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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARIBEL SANCHEZ AND
CHARLES ARMAND

Plaintiff,

V.

CIVIL ACTION NO.:

BOARD OF EDUCATION OF THE CITY OF ORANGE, CITY OF ORANGE, TOWNSHIP and THE ROSA PARKS COMMUNITY SCHOOL PTA

Defendant.

COMPLAINT AND JURY DEMAND

Plaintiffs, Maribel Sanchez and Charles Armand, residing at 129 Summer Street, Orange, New Jersey, file this Complaint and would respectfully show the Court as follows:

NATURE OF CASE

1. On July 26, 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq*. ("ADA"), establishing the most important civil rights for persons with disabilities in our country's history. This action is brought by plaintiffs, Maribel Sanchez and Charles Armand, against the defendants, arising from their failure to provide reasonable accommodations for plaintiffs' disability and for discrimination based on their disability. Plaintiffs have experienced humiliation and discrimination in violation of their civil rights through

defendants' policies and practices of discrimination on the basis of disability.

2. This action claims that defendants violated the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1, *et. seq*. ("NJLAD"), the ADA, and Section 504 of the Rehabilitation Act ("Section 504"), as well as other state and common law causes of action. In this action, plaintiffs suffered damages and now seek declaratory and injunctive relief, and compensatory and punitive damages.

JURISDICTION AND VENUE

3. Jurisdiction of this court is invoked pursuant to the ADA and Section 504. This suit is authorized and instituted pursuant to the exercise of the police power of the State for the protection of the public safety, health, and morals and to promote the general welfare and the fulfillment of the provisions of the Constitutions of the State of New Jersey and the United States of America guaranteeing civil rights.

PARTIES

4. Plaintiffs Maribel Sanchez and Charles Armand are residents of the City of Orange, New Jersey. Plaintiffs' daughters are students at the Rosa Parks Elementary School operated by the defendants. Plaintiffs are profoundly deaf and communicate through American Sign Language. They require a qualified American Sign Language interpreter to communicate effectively with the defendants in order to participate in their children's education. Plaintiffs are qualified persons with a disability pursuant to Section 504, the ADA and NJLAD.

5. Defendant, Board of Education of the City of Orange, is located at 451 Lincoln Avenue, Orange, New Jersey. Defendant City of Orange Township is a municipality in the State of New Jersey with its primary offices located 29 North Day Street, Orange, New Jersey. Defendant Rosa Parks Community School PTA is an unincorporated association with offices located at 369 Main

Street, Orange, New Jersey.

6. Defendants are public entities under the ADA and the NJLAD and are recipients of federal financial assistance. Thus, they are subject to the requirements of the ADA, the NJLAD and Section 504 of the Rehabilitation Act.

FACTS

7. The ADA, Title II, provides that State, County and Local Government entities cannot exclude individuals with disabilities from participation in or denying them the benefits of services, programs or activities.

8. The NJLAD specifically prohibits discrimination based upon disability.

9. Section 504 of the Rehabilitation Act provides that "No otherwise qualified individual with a disability" shall be "excluded, denied or discriminated against" by any facility receiving "federal financial assistance”.

10. Defendants provides public accommodations within the meaning provided in each of the above laws.

11. As relevant to the present action, discrimination includes a failure to provide appropriate and reasonable auxiliary aids to plaintiff to ensure effective communication. 28 C.F.R. Section 36.303(c).

12. The auxiliary aids required in this case were and are qualified interpreters to ensure effective communication with plaintiffs during their interactions with their daughters’ teachers and administrators. These aids were requested and never provided by the defendants during the 2015-2016 school year and continues to date. This complaint is based upon the failure of defendants to

ensure effective communication with plaintiffs, which is ongoing.

13. Plaintiffs have two children who attend Rosa Parks Elementary School. One daughter Kayla is in first grade and their other daughter, Layla is in Pre-K and was in the same program last year. In September of 2015, Plaintiffs attended a parent orientation as their daughter Kayla was beginning kindergarten. At this meeting during which no interpreter was provided, plaintiffs again advised the school principal that they were profoundly deaf, communicated in American Sign Language and required American Sign Language interpreters to communicate. Plaintiffs then provided the school principal with a list of qualified sign language interpreters. However, throughout the school year there were various events for both of their daughters, Kayla and Layla, during which no interpreters were provided.

14. By way of example, in February of 2016, Plaintiffs were invited by the defendants to attend a parent/teacher conference in February 2016. Plaintiffs communicated with the defendants and requested that the defendants provide for and arrange an interpreter for the meeting. After several cancellations of this meeting by the defendants, Plaintiff Maribel Sanchez spoke with Shelly Harper, employed by the defendants and again repeated their request. Thereafter on March 10, 2016 Layla's teachers asked Plaintiffs to attend a parent teacher meeting but Plaintiffs were told to bring their own interpreters. Subsequently, Ms. Harper advised plaintiffs in a letter dated March 31, 2016 that the defendant would not agree to provide an interpreter for any school events and that Plaintiffs would be required to use a notepad to communicate during any meeting or event. As a result, Plaintiffs were and are not able to participate or understand during any meetings or school events involving their daughters.

15. Plaintiffs and Charles Armand's mother wrote letters and all asked that the school

provide interpreters so they could participate in their daughters' education. They further asked that the school communicate with them directly as school personnel would communicate with their children's grandmother and not with them due to their disability.

15. Left with no other options, Plaintiffs then contacted the State of New Jersey Division of the Deaf who intervened with the school to explain that the law required them to provide interpreters for Plaintiffs for these events and meetings. Thereafter, Defendants said they would get an interpreter for an end of the year meeting to be held on June 17, 2016. No interpreter showed up and Defendants stated there was some sort of family emergency. Defendants however never rescheduled the meeting and therefore Plaintiffs were left once again without any ability to understand and participate in their daughter's education as other non-disabled parents can do.

16. This failure to accommodate continues in the present school year of 2016-2017. Despite Plaintiffs' requests for interpreters for meetings and events, Defendants have failed to provide interpreters for any event to date.

17. Further in October of 2016, Plaintiffs sought to participate in the Rosa Parks Community School PTA and requested an ASL interpreter in advance of the PTA meeting scheduled for October 18, 2016. The PTA ignored her request and failed to provide an interpreter. Plaintiff Maribel Sanchez would like to attend PTA events and become an active member but is unable to do so due to her disability and the Defendants' failure to accommodate her disability.

17. Plaintiffs were and are often ignored, humiliated and treated like non-persons by the defendants. Defendants' actions resulted in plaintiffs being irretrievably denied participation in their daughters' education and the programs involving same.

18. Each and all of the above acts, both of omission and commission, were intentional acts

of discrimination and each and all were a proximate cause of the damages suffered by plaintiffs. Plaintiffs will require interpreters again in the future in order to participate in their daughters' education and based upon defendants' ongoing pattern of discrimination will once again be denied reasonable accommodation for their disability.

19. Defendants' willful, knowing, and repeated acts of intentional discrimination against plaintiffs evidences a pattern and practice of discrimination that is in violation of the NJLAD, the ADA and Section 504 and caused plaintiffs to suffer and continue to suffer mental pain and anguish.

CLAIMS

20. Plaintiffs re-allege and incorporate by reference the allegations of fact contained in the previous paragraphs.

FIRST COUNT
DEFENDANTS VIOLATED TITLE II OF THE AMERICANS WITH DISABILITIES ACT

21. Plaintiffs' hearing loss substantially limits their major life activities of hearing and speaking and their ability to effectively communicate orally. Therefore, Plaintiffs are each individuals with a disability under Title II of the ADA. The plaintiffs, as parents of children attending defendants' school, met the eligibility requirements for participation in Defendants' programs, services, and activities at all times material hereto. Thus, Plaintiffs are each a qualified individual with a disability and are entitled to the protections of the ADA under 42 U.S.C.

§12131(1) and 28 C.F.R. §35.104.

22. Defendants violated Title II of the ADA in numerous ways, including discriminatory actions which occurred when it:

(a) Failed to maintain policies and procedures to ensure compliance with Title II of the ADA, specifically policies that provide equal access and effective communication to individuals with disabilities;

(b) Failed to ensure that communications with plaintiffs was as effective as communications with non-disabled parents;

(c) Failed to provide auxiliary aids and services, including qualified interpreters, and to modify policies and procedures to prevent discrimination against plaintiffs;

(d) Failed to establish effective self-evaluations and/or provide notice of plaintiffs' rights as individuals with a disability under the ADA;

(e) Excluded plaintiffs from services of the public entity and denied plaintiffs the benefit of these services due to their disability.

23. Plaintiffs suffered severe emotional distress and damages in the past, and continue to suffer emotional distress and damages due to defendants' violation of Title II of the ADA.

SECOND COUNT
DEFENDANTS VIOLATED SECTION 504 OF THE REHABILITATION ACT OF 1973

24. Plaintiffs are deaf and their disability substantially limits their major life activities, including their ability to effectively communicate with others who do not know sign language. Therefore, plaintiffs are each considered to be an individual with disabilities under Section 504, as amended, See 29 U.S.C. §706(8). Plaintiffs are otherwise qualified under Section 504 because they meet the essential eligibility requirements for participation in defendants' services at all times material hereto. Defendants are recipients of federal financial assistance.

25. Defendants' policies, practices and procedures, particularly the actions and omissions described above, violated plaintiffs' rights under Section 504 by discriminating on the basis of disability.

26. Additionally, defendants also denied plaintiffs services which they made available to non-disabled persons.

27. Defendants violated plaintiffs' rights through repeated refusals to reasonably accommodate plaintiffs with appropriate auxiliary aids and services or to modify policies and procedures to prevent discrimination.

28. Plaintiffs suffered severe emotional distress and damages in the past, and continue to

suffer distress and damages due to defendants' violations of Section 504.

THIRD COUNT
DEFENDANTS VIOLATED THE NEW JERSEY LAW AGAINST DISCRIMINATION

29. Defendants' conduct is in violation of the N.J.S.A. 10:5-1, et seq., N.J.S.A. 34:1-69.10 et seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court grant the following relief against defendants for the following:

1. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that defendants' practices, policies and procedures have subjected plaintiffs to discrimination in violation of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and the New Jersey Law Against Discrimination.

2. Permanently enjoin defendants from any practice, policy and/or procedure which will deny plaintiffs equal access to, and benefit from defendants' services or which deny plaintiffs effective communication with defendants. Enter a permanent injunction ordering defendants:

A. To cease discrimination against plaintiffs and other deaf or hard of hearing individuals;

B. To promulgate and comply with policies and procedures to ensure that defendants and their staff do not discriminate against individuals who are deaf and hard of hearing;

C. To promulgate and comply with procedures to ensure that defendants will provide and pay for interpreter services when needed by individuals who are deaf or hard of hearing in all services offered by defendants;

D. To promulgate and comply with procedures to ensure that defendants will notify individuals who are deaf or hard of hearing of their right to effective communication. This notification will include posting explicit and clearly worded notices that defendants will provide sign language interpreters, videophones, and other communication services to ensure effective communication with and for deaf or hard of hearing persons.

E. That defendants' employees be provided with appropriate training to ensure their familiarity with and understanding of the accommodations and auxiliary services that must be made available for persons that are deaf or hard of hearing.

3. Award compensatory and punitive damages;

4. Award reasonable costs and attorneys' fees; and

5. Award any and all other relief that may be necessary and appropriate.

JURY DEMAND

Plaintiffs demand trial by jury for all of the issues a jury properly may decide, and for all of the requested relief that a jury may award.

Respectfully submitted,

/s/ Clara R. Smit
CLARA R. SMIT, ESQ.
Attorney for Plaintiffs,
Maribel Sanchez and Charles Armand

Dated: December 18, 2016